Lien Chong Credit & Leasing Sdn Bhd v Sri Saga Holdings Sdn Bhd & Ors

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO J-02-217-94

ZAKARIA YATIM, MAHADEV SHANKAR AND VC GEORGE JJCA

21 AUGUST 1996

Civil Procedure *— Summary judgment — Defence of mere denial — Default in repayment of loan — Plain and obvious case for summary judgment*

The first respondent failed to pay the balance of a loan granted by the appellant. The second, third, fourth, fifth and sixth respondents were the guarantors for the loan. The appellant applied for summary judgment against the respondents. In their statement of defence, the respondents merely denied the allegations contained in the appellant's statement of claim. The trial judge dismissed the appellant's application and held that the interest rate for the loan was excessive. The first respondent did not tender any affidavit that the interest rate was excessive but instead had conceded the total amount repayable to the appellant. The appellant appealed.

Held, allowing the appeal:

This was a plain and obvious case for summary judgment. Accordingly, the appeal was allowed with costs and judgment entered for the appellant (see p 368I).

[Bahasa Malaysia summary

Penentang pertama gagal membayar baki pinjaman yang diberikan oleh perayu. Penentang-penentang kedua, ketiga, keempat, kelima dan keenam adalah penggerenti kepada pinjaman tersebut. Perayu memohon untuk penghakiman terus terhadap penentang-penentang. Di dalam pernyataan pembelaan mereka, penentang-penentang hanya membuat penafian terhadap pengataan-pengataan yang terkandung di dalam pernyataan tuntutan perayu. Hakim perbicaraan menolak permohonan perayu dan memutuskan bahawa kadar faedah ke atas pinjaman itu adalah berlebihan. Penentang pertama tidak mengemukakan apa-apa afidavit bahawa kadar faedah itu adalah berlebihan tetapi sebaliknya telah mengakui jumlah yang perlu dibayar balik kepada perayu. Perayu membuat rayuan.

Diputuskan, membenarkan rayuan:

Ini adalah kes yang jelas dan nyata untuk penghakiman terus. Oleh itu, rayuan ini dibenarkan dengan kos dan penghakiman dimasukkan untuk perayu (lihat ms 368I).]

Notes

For cases on summary judgment, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 3197–3520.

Appeal from: Civil Suit No 22–189 of 1993 (High Court, Johor Bahru)

L Parthiban (*L Parthiban & Associates*) for the appellant.
Nur'aini bte Mohammad (*Kamarudin & Partners*) for the respondent.

Zakaria Yatim JCA (delivering the judgment of the court): This is an appeal against the decision of the learned judge who dismissed the appellant's application for summary judgment against the respondents. After hearing both parties, we allowed the appeal with costs and entered judgment for the appellant as prayed. Our decision was unanimous.

The appellant is a licensed moneylender. The first respondent is a company incorporated in Malaysia. The second, third, fourth, fifth and sixth respondents are guarantors. By a loan memorandum signed by the appellant and the first respondent on 7 May 1986, the appellant agreed to lend the first respondent RM365,000. The rate of interest was 12% pa. The loan was duly granted to the first respondent. As security for the loan, the first respondent charged a piece of land, EMR 69, Lot No 124 in Mukim Jelutung. Under the terms of the memorandum, the date of repayment was 7 May 1986.

By a guarantee agreement dated 7 May 1986, the second, third, fourth, fifth and sixth respondents guaranteed repayment of the loan by the first respondent.

The first respondent defaulted in payment. The first respondent agreed to settle the loan amount after obtaining another loan from Malaysia Credit Finance Bhd. The first respondent asked the appellant to release the charged land so as to enable it to obtain the loan from Malaysia Credit Finance. The first respondent agreed to pay the appellant RM740,000 towards the settlement of the loan. The appellant released the charge.

The first respondent paid the appellant RM35,000 leaving a balance of RM705,000. The appellant's claim was for RM705,000 together with interest at the rate of 8% from the date of the writ to the date of settlement.

The respondents in their statement of defence merely denied the allegations contained in the statement of claim. The first respondent denied that a valid agreement was concluded with the appellant. It said that even if an agreement was signed, no money was ever handed to the first respondent.

The learned judge said that the interest charged was excessive. There is no affidavit by the first respondent to say that the interest was excessive. The first respondent in fact conceded in a letter dated 31 March 1988 that the total amount repayable to the appellant was RM740,000.

In our opinion, this is a plain and obvious case for summary judgment. We accordingly allowed the appeal with costs and entered judgment for the appellant as prayed in the statement of claim. Costs to be taxed and deposit to be refunded to the appellant.

Appeal allowed.

Reported by Jafisah Jaafar